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SEP 10 2010

CLERK
United States Bankruptcy Court
San Jose, California

YOLANDA A. RUIZ
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Debtor

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In Re:

RUIZ, YOLANDA

Debtor(s)

) Case No.: 09-59281
)
) **MOTION FOR ORDER ALLOWING DEBTOR TO SELL**
) **RESIDENTIAL REAL PROPERTY, MOTION TO EMPLOY**
) **THE BROKER AND ALLOW BROKER'S COMPENSATION**
) (2161 Caleb Court, San Jose, CA 95121)
) DATE: September 20, 2010
) TIME: 1:15 PM
) CRTRM: 3020
)
)

MOVANT, YOLANDA ANDRADE RUIZ (also referred to as "Debtor"):

1. Yolanda Andrade Ruiz caused to be filed a Voluntary Petition under Chapter 13 on October 28, 2009 (herein "the Petition date").
2. Among the assets of their bankruptcy estate at the time of filing of the Voluntary Petition was a residence located at 2161 Caleb Court, San Jose, CA 95121 (hereinafter referred to as the "Real Property").
3. At the time of filing the Chapter 13 case, the Real Property was encumbered by a first deed of trust due and owing to Bank of America Home Loans. The balance owing on the principal, as of the filing date of this Motion, with post-petition interest compounding, is approximately \$626,995.05.
4. The Real Property is also encumbered by a second lien, also due and owing to Bank of America Home Loans, in the amount of \$67,689.00, approximately. (See Preliminary Title Report, dated _____, attached hereto as Exhibit A, and incorporated herein).

**MOTION FOR ORDER ALLOWING DEBTOR TO SELL RESIDENTIAL REAL PROPERTY, MOTION TO EMPLOY
THE BROKER AND ALLOW BROKER'S COMPENSATION**

- 1 5. Although the Debtor has yet to receive an offer for the purchase of the Real
2 Property, the value of the Real Property is believed to be approximately
3 \$427,836, requiring the approval of a short sale, both by Bank of America Home
4 Loans, and by the Chapter 13 Trustee.
- 5 6. The proceeds from the sale shall be used to partially satisfy the amount due
6 and owing to the holder of the first deed of trust, Bank of America Home Loans,
7 and the normal and customary closing costs, real estate commissions, and any
8 demand of the Chapter 13 Trustee.
- 9 7. As a condition of the sale of the Property, the title company used by the
10 Debtor shall comply with and satisfy the escrow demand of Devin Derham-Burk,
11 the Chapter 13 Trustee. If the Chapter 13 Trustee does not intend to submit a
12 demand, she shall notify the escrow agent in writing. Per her demand, the
13 Trustee shall be the disbursing agent on Proofs of Claim relating to this case,
14 filed with the clerk's office of the Bankruptcy Court. The Trustee shall take
15 her statutory fees on disbursements made by her in connection with this
16 transaction whether or not the transaction connected closes prior to
17 confirmation of the Plan.
- 18 8. Debtor hereby moves this Court for an Order authorizing permission to sell the
19 real property and distribute the proceeds as set forth herein.

20 **MOTION TO EMPLOY REAL ESTATE AGENT AND ALLOW BROKER'S COMMISSION**

- 21 9. Debtor signed an exclusive listing agreement with real estate broker, Ponciano
22 Alvarez, of "New Bay Realty" (hereinafter referred to as "Debtor's Agent").
- 23 10. Proceeds from the sale include real estate commissions of 3.0% for Debtor's
24 Agent, and 3.0% to Buyer's Agent.

25 WHEREFORE, Debtor by and through her attorney of record, prays for an order of
26 this Court as follows:

- 27 1. Authorizing the sale of the real property commonly known as 2161 Caleb

28 Court, San Jose, CA 95121 upon the conditions and terms as set forth herein.

**MOTION FOR ORDER ALLOWING DEBTOR TO SELL RESIDENTIAL REAL PROPERTY, MOTION TO EMPLOY
THE BROKER AND ALLOW BROKER'S COMPENSATION**

2. For an Order authorizing employment of Ponciano Alvarez of New Bay Realty for services as Debtor's broker for the sale of the real property, and authorizing the broker's fee of three percent (3.0%).

Dated this 7/29/2010

MOTION FOR ORDER ALLOWING DEBTOR TO SELL RESIDENTIAL REAL PROPERTY, MOTION TO EMPLOY
THE BROKER AND ALLOW BROKER'S COMPENSATION

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In Re: YOLANDA ANDRADE RUIZ, CASE NO. 09-59281

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